

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

IN RE TRICOR DIRECT PURCHASER  
ANTITRUST LITIGATION

C.A. No. 05-340 (KAJ)

(consolidated)

THIS DOCUMENT RELATES TO:

C.A. No. 05- 358 (K.A.J)

**AMENDED NOTICE OF VIDEOTAPE DEPOSITION OF MEIJER INC. AND MEIJER  
DISTRIBUTION, INC. PURSUANT TO FED.R.CIV.P. 30(B)(6), LIMITED TO CLASS  
CERTIFICATION ISSUES**

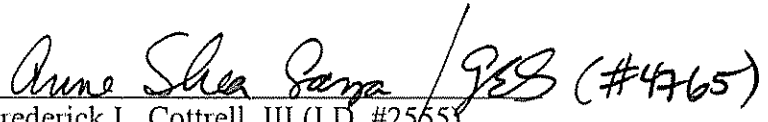
To: All Counsel on the Attached Service List

PLEASE TAKE NOTICE that pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, counsel for Defendants shall take the deposition by oral examination of plaintiffs Meijer Inc. and Meijer Distribution, Inc. (collectively, "Meijer"), on July 7, 2006 at 9:30 A.M., at the offices of Miller, Canfield, Paddock and Stone, P.L.C., 99 Monroe Avenue, N.W., Grand Rapids, MI, or such other location agreed to by counsel. The deposition will be recorded by videotape as well as stenographically before a Notary Public or other officer authorized to administer oaths, and shall continue from day to day until completed, with such adjournments as to time and place as may be necessary.

NOTICE IS HEREBY GIVEN that pursuant to Fed. R. Civ. P. 30(b)(6), Meijer is required to designate one or more appropriate persons to testify on its behalf with respect to each of the matters set forth in Exhibit A hereto, and the person(s) so designated shall be required to testify as to each of those matters known or reasonably available to the corporation. You are invited to attend and cross-examine. Meijer must also produce documents with respect to each of the matters set forth in Exhibit B hereto by July 5, 2006. Nothing in this notice shall be construed in any way to prejudice Defendants from conducting further 30(b)(6) depositions on non-class certification issues.

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Dated: June 30, 2006

### **DEFINITIONS AND INSTRUCTIONS**

1. The use of any definition for purposes of this Notice shall not be deemed to constitute an agreement or acknowledgement on the part of defendant that such definition is accurate, meaningful or appropriate for any other purpose in this action.

2. The terms “Your” or “Your” means Meijer Inc. and Meijer Distribution, Inc.; all parents, subsidiaries, and affiliates thereof, all divisions, predecessors, successors and assigns of each of the foregoing; and all officers, directors, employees, agents, consultants, attorneys and all other persons acting or purporting to act on behalf of, or under the control of, each of the foregoing.

3. “Impax” means counterclaim plaintiff Impax Laboratories, Inc., all parents, subsidiaries, and affiliates thereof, all divisions, predecessors, successors and assigns of each of the foregoing; and all officers, directors, employees, agents, consultants, attorneys and all other persons acting or purporting to act on behalf of, or under the control of, each of the foregoing.

4. “Kerr” means Frank W. Kerr Co.; all parents, subsidiaries, and affiliates thereof, all divisions, predecessors, successors and assigns of each of the foregoing; and all officers, directors, employees, agents, consultants, attorneys and all other persons acting or purporting to act on behalf of, or under the control of, each of the foregoing.

5. You have represented that You are the assignee of Kerr’s claims for the purposes of this action. As the assignee of Kerr’s claims, Kerr’s activities concerning the claims that You have raised on its behalf are reasonably known to You. As such, You must designate a witness or witnesses that are adequately prepared to respond to the topics of this Federal Rule of

Civil Procedure 30(b)(6) Notice regarding Kerr's activities relating to the claims and subject matter of this action.

6. The term "TriCor®" means any pharmaceutical product marketed under the trade name "TriCor®" at any time.

7. The term "Lofibra®" means any pharmaceutical product marketed under the trade name "Lofibra®" at any time.

8. The term "Antara®" means any pharmaceutical product marketed under the trade name "Antara®" at any time.

9. The term "Triglide®" means any pharmaceutical product marketed under the trade name "Triglide®" at any time.

10. The term "Lipofen®" means any pharmaceutical product marketed under the trade name "Lipofen®" at any time.

11. The term "document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a). A draft or non-identical copy is a separate document within the meaning of this term.

12. The term "concerning" means discussing, relating to, referring to, describing, evidencing or constituting

13. The use of the singular of any word shall include the plural and vice versa, and the use of a verb in any tense or voice shall be construed as the use of that verb in all other tenses and voices, as necessary to bring within the scope of the discovery request all responses that might otherwise be construed as outside its scope.

14. The relevant time frame for these topics is January 1998 to the present.

**EXHIBIT A**

You are requested to designate one or more officers, directors or managing agents, or other persons who consent to testify on Your behalf who have knowledge of the matters set forth herein.

**TOPICS**

1. Your agreement with Kerr assigning Kerr's claims to You.
2. Kerr's records concerning purchases, inventory, and/or returns, including the policies and procedures Kerr used to determine the quantities of fenofibrate products you purchased, including (1) TriCor®, (2) Lofibra®, (3) Antara®, (4) Triglide®, (5) Lipofen®, and (6) any proposed Impax product either developed or under development, including the data produced by You Bates labeled MEI 0001-141 and MEI 00157.
3. The process(es), method(s), strategies, and/or procedures Kerr proposed, considered, or used for setting or establishing the prices (whether direct or contract, and including rebates, discounts, and/or chargebacks) for any fenofibrate product, including (1) TriCor®, (2) Lofibra®, (3) Antara®, (4) Triglide®, (5) Lipofen®, and (6) any proposed Impax product either developed or under development.
4. Your ability to control or influence the type or amount of pharmaceutical products demanded by Your customers or prescribed for consumers, and the substitutability between any such products, including (1) TriCor®, (2) Lofibra®, (3) Antara®, and (4) Triglide®, (5) Lipofen®, (6) any proposed Impax product either developed or under development, (7) statins, and (8) any other cholesterol reducing drugs.
5. The Generic Pharmaceutical Program identified in the document produced by You Bates labeled MEI 00151-53, and any similar program, policy, or practice undertaken by You or Kerr.

6. Kerr's communications with customers, manufacturers, suppliers, and competitors concerning the availability of fenofibrate products, including (1) TriCor®, (2) Lofibra®, (3) Antara®, and (4) Triglide®, (5) Lipofen®, and (6) any proposed Impax product either developed or under development, and any analyses of the effect on the price you paid for any fenofibrate product.

7. Kerr's communications or analyses concerning any comparisons between TriCor® and any other version of TriCor®, or any version of Lofibra®, Antara®, Triglide®, Lipofen®, or any proposed Impax product either developed or under development.

**EXHIBIT B**

Defendants hereby incorporate by reference the Definitions and Instructions from Defendants' First Set of Requests for the Production of Documents and Things from the Direct Purchaser Plaintiffs.

1. Defendants hereby request the production of all documents relating or referring to the topics set forth in Exhibit A that have not already been produced in this litigation.



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**CERTIFICATE OF SERVICE**

I hereby certify that on June 30, 2006, I caused to be served by hand delivery the foregoing document and electronically filed the same with the Clerk of Court using CM/ECF which will send notification of such filing(s) to the following:

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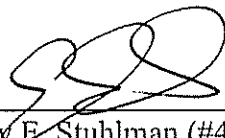
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